IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

O R D E R

Udairam & Ors.
Vs.
State of Rajasthan & Anr.

S.B. CRIMINAL MISC. PETITION NO.763/2007

Petition under Sec.482 Cr.P.C. against the order dated 24.04.2007 passed in Criminal Revision No.36/2006 by learned Sessions Judge, Balotra.

DATE OF ORDER :: 8th August, 2007.

PRESENT

HON'BLE MR.JUSTICE SATYA PRAKASH PATHAK

Mr. V.S. Choudhary)
Mr. I.R. Choudhary)for the petitioner.
Mr. Ashok Upadhyay, Public Prosecutor.
Mr. C.R. Jakhar for non-petitioner No.2.

BY THE COURT:

By this petition under Section 482 Cr.P.C., the petitioner has challenged the order dated 14.02.2005 passed by the learned Chief Judicial Magistrate, Balotra whereby the learned trial court took cognizance against the petitioner, which was

affirmed by the learned Sessions Judge, Balotra vide order dated 24.04.2007 in the revision petition.

Briefly stated, facts necessary for final disposal of the case are that a complaint was filed whereby several allegations were made against the accused petitioners and the said complaint was sent for investigation to the police under Section 156(3) Cr.P.C. The police after investigation submitted negative report. The learned trial court after recording of the statements of some of the witnesses under Section 202 Cr.P.C. found that prima facie a case was made out for taking cognizance under Section 379 IPC, therefore, took cognizance by its order dated 14.02.2005. The said order was challenged before the learned Revisional Court, who dismissed the revision petition filed by the petitioners vide order dated 24.04.2007. Hence, the present misc. petition has been preferred.

The contention of learned counsel for the petitioners is that no reasons were assigned by the learned trial court while taking cognizance and has not considered the final report and passed impugned order dated 14.02.2005. He submits that the

impugned order taking cognizance suffers from illegality, therefore, same deserves to be set aside.

On the other hand, learned counsel for the respondents supported the orders passed by the learned courts below.

I have considered the submissions made before me.

A perusal of the order of the learned trial court reveals that after hearing both side and taking into consideration the statements of some of the witnesses recorded under Section 161 Cr.P.C., and also statements recorded under Section 202 Cr.P.C., prima facie, found that a case was made out, therefore, took cognizance against the petitioners. In view of above, in my humble opinion, it cannot be said that the evidence collected during the course of investigation and the statements recorded were not taken into consideration while taking cognizance against the petitioners.

At the time of taking cognizance what is required to be

seen is that the court should be satisfied that on the basis of evidence collected a case is made out. In the instant case, the learned trial court found that material collected during the course of investigation as well as the statements recorded, a case is made out against the petitioners. A copy of the Final Report has been supplied to the Court, the same may be kept with the file.

In the above circumstances, I do not find any infirmity in the impugned orders passed by the learned courts below and there appears no exceptional circumstance available for invoking the powers vested in this Court under Section 482 Cr.P.C. The present petition being devoid of merit deserves to be dismissed. Accordingly, the misc. petition filed by the petitioner is hereby dismissed.

(SATYA PRAKASH PATHAK), J.